IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2179 of 2005
With
CIVIL APPLICATION No. 1895 of 2007
In
FIRST APPEAL No. 2179 of 2005

For Approval and Signature:
HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO.LTD - Appellant(s)
Versus
JANUBEN MAVJIBHAI SARVAIYA & 8 - Defendant(s)

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Appearance :
MS AVANI S MEHTA for Appellant(s) : 1,
MR BS SEJPAL for Defendant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7, 1.2.8,1.2.9

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

The Civil Application has been filed by the original claimants seeking disbursement of a part of sum deposited by the opponent no.1 insurance company. While taking up this Civil Application for hearing, at the joint request of learned advocates appearing for the parties, we have taken up the First Appeal itself for final disposal.

2. This First Appeal arises out of a judgement and award dated 28th February, 2005 passed by Motor Accident Claims Tribunal(Aux.), Bhavnagar in MACP No. 463/2001.

3. On 23rd April, 2001, when one Mavjibhai was travelling in a three wheeler tempo-rickshaw bearing registration no. G.J.4.U.5663, he fell down from the tempo-rickshaw and received serious bodily injuries. He was shifted to the hospital but while under treatment he succumbed to injuries. His widow and six minor children therefore, filed the above mentioned claim petition claiming compensation of Rs.7,50,000/- from the driver, owner and insurer of the tempo-rickshaw.

4. In the title of the judgement under challenge though the Claims Tribunal has referred to claim petition as one having been filed under section 166 of the Motor Vehicles Act(here-in-after

referred to as “the said Act”), in the body of the claim petition, same is referred to as one having been filed under Section 163A of the said Act. Learned advocates appearing for the parties had therefore, taken specific instructions on this aspect of the matter and informed us that the claim petition was in fact filed and pursued as one under Section 163A of the said Act. In view of this, Claims Tribunal did not find it necessary to go into the question of negligence of the driver of the vehicle involved in causing the accident.

5. With respect to the quantum of compensation, the Tribunal believed the monthly income of the deceased at Rs.3,000/- from agriculture. The claimants had produced documentary evidence to show that the deceased owned substantial agricultural lands. On the basis of the postmortem report, the Tribunal believed the age of the deceased as 35 years. The Tribunal thereupon, applied the structured formula in the Second Schedule to the Act and found that the claimants should receive Rs. 3,84,000/- towards dependency benefits. In doing so, the tribunal adopted a multiplier of 17. To this amount, the Tribunal added Rs. 2,000/- for funeral expenses and Rs. 5,000/- for loss of consortium. A total award of Rs. 3,91,000/- was passed in favour of the claimants to be recovered with interest at the rate of 6% per annum.

6. Before us learned advocate Ms. Avni Mehta for the applicant insurance company mainly concentrated on the maintainability of the claim petition itself. She submitted that in the complaint lodged by the near relative of the deceased who was also travelling in the same tempo-rickshaw,it has been stated that the deceased was unwell, felt giddy and therefore, fell down from the rickshaw which caused fatal injuries to him. She therefore, submitted that even under Section 163A of the said Act, claimants could not have maintained the claim petition since the sole cause of death of the deceased was his own conduct. She submitted that even though question of negligence of the driver of the vehicle involved in the motor accident is not of any importance while deciding claim petition under Section 163A of the said Act, nevertheless, in the present case, it cannot be stated that deceased died in an accident. She therefore, submitted that the tribunal erred in entertaining the claim petition itself.

6.1 Reliance was placed on the decision of Hon'ble Supreme Court in the case of **Deepal Girishbhai Soni and others v. United India Insurance Co. ltd. Baroda** reported in (2004) 5 Supreme Court Cases 385, wherein the Apex Court has traced the legislative history leading to enactment of Section 163A of the said Act.

7. On the other hand, learned advocate Shri B.C. Sejpal appearing for the original claimants opposed the appeal. He submitted that the deceased died while travelling in a motor vehicle. Admittedly, the claim petition was filed under Section 163A of the said Act. He pointed out that Section 163A of the said Act makes special provisions for payment of compensation on structured formula for No Fault Liability cases. He submitted that as per the provisions contained in Sub-section(1) of Section 163A of the said Act, the owner of the motor vehicle or the authorised insurer is liable to pay compensation as indicated in Second Schedule to the Act in the case of death or permanent disablement due to accident arising out of the use of motor vehicle. He further submitted that to maintain the claim petition under Section 163A of the said Act, all that is required to be established is that the death or permanent disability occurred due to accident arising out of use of motor vehicle.

7.1 Heavy reliance was placed on the decision of Apex Court in the case of **Smt. Rita Devi and others v. New India Assurance Co. ltd. and another** reported in AIR 2000 Supreme Court 1930. In the said case, passengers travelling in auto-rickshaw while trying to steal the rickshaw killed the driver of the rickshaw. In such a

case also, the Apex Court held that the heirs of the deceased Rickshaw driver would be entitled to maintain the claim petition under the Motor Vehicles Act.

8. Before dealing with the legal submissions, we may briefly notice the factual aspects arising in this case. Admittedly, the deceased was travelling in a three wheeler tempo-rickshaw on the date of accident. While the tempo was in motion, deceased fell down and received serious injuries on his face and on his head. From the postmortem report, it can be seen that the deceased died due to cardio respiratory failure, due to shock and injury to vital organ-brain due to head injury.

9. Though it is true that the complainant had stated before the police authorities that deceased fell down since he was feeling giddy, the complainant has not been examined by the opponent before the Claims Tribunal. Even then we are prepared to believe that all was not well with the deceased and he was feeling unwell on the date of incident. However, under ordinary circumstances, a person would not fall down from a moving vehicle unless same was being driven at high speed or in a jerky fashion. Additionally, we may also highlight that the deceased was travelling in a three wheeler tempo-rickshaw. Even if he had fallen down from a vehicle moving

at moderately slow speed, he was unlikely to have received serious injuries and at any rate injuries which would prove to be fatal. These factors would lead to inescapable conclusion that the tempo-rickshaw was being driven at an excessive speed and in a jerky fashion. Significantly, we also find from the panchnama of the scene of accident that the road was relatively narrow of about 18ft. width and the accident took place on a bend. This would further strengthen our belief that the vehicle was being driven at a high speed even on a turn. It was precisely because of this reason that the deceased not only fell down, but also received very serious injuries. As observed earlier, ordinarily, even if the deceased was feeling giddy, with another co-passenger travelling with him in the tempo-rickshaw who was his close relative, deceased would not have fallen down from the tempo-rickshaw unless the vehicle was being driven with jerks and at high speed. Additionally, even if he had fallen down, he would have got away with minor injuries and not suffered injuries serious enough to cause his death.

10. In our opinion, therefore, injuries received by the deceased were directly related to the nature of driving of the tempo-rickshaw by the driver.

11. Section 163A of the said Act reads as

follows :

"163A. Special provisions as to payment of compensation on structured formula basis-(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation-For the purposes of this sub-section,"permanent disability' shall have the same meaning and extent as in the Workmen's Compensation Act, 1923)8 of 1923).

(2) In any claim for compensation under sub-section(1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3)The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

(emphasis supplied)

12. The thrust of the said provisions contained in sub-section(1) of Section 163A of the said Act thus is that the claimants can seek compensation as per the structured formula provided in Second Schedule of the Act for death or permanent disablement due to accident arising out of use of motor vehicle. The question of negligence of the driver of the motor vehicle in such a case is of no consequence. This aspect of the matter

has been discussed by the Apex Court in the case of **Deepal Girishbhai Soni and others v. United India Insurance Co. ltd. Baroda** (supra).

13. We are unable to accept the contention of learned advocate for the appellant insurance company that it was not a case of accidental death and in any case it was not a case of death due to accident arising out of use of motor vehicle. Admittedly, the death of the deceased was not due to natural cause nor was it a homicidal death. The phenomenan of the deceased falling down from a vehicle moving at high speed and being driven in somewhat jerky manner was certainly a case of accident.

14. The word “accident” has been described in Webster's Third New International unabridged Dictionary as an event or condition occurring by chance or arising from unknown or remote causes. It also describes the term as a sudden event or change occurring without intent or volition through carelessness, unawareness, ignorance, or a combination of causes and producing an unfortunate result.

15. The events which led to the death of the deceased were thus certainly accidental. We see no possibility of dissociating and severing the accident which caused the deceased to fall down from the tempo-rickshaw resulting into his

receiving fatal injuries and use of the motor vehicle in which he was travelling. Death of the deceased was therefore, certainly due to accident arising out of use of motor vehicle.

16. At this stage, we may usefully refer to the decision of Apex Court in the case of Shivaji Dayanu patil and another v. Smt. Vatschala Uttam More reported in AIR 1991 Supreme Court 1769. In the said case, the tanker carrying petrol had collided with the truck and had overturned and was lying about 20ft. away from the highway. As a result of overturning of the tanker, the petrol contained in the tanker leaked. Sometimes thereafter, explosion took place in the tanker resulting in fire. Number of persons who had assembled near the petrol tanker sustained burn injuries and a few of them succumbed to such injuries.

Before the Supreme Court, contention of insurance company of the tanker was that due to the accident, tanker was rendered immobile and would therefore, not be a motor vehicle as defined in Section 2(18) of the Motor Vehicles Act, 1939(here-in-after referred to as “the Act of 1939”). It was further contended that in any case the nature of accident was such that the same cannot be stated to have arisen out of the use of motor vehicle.

The contentions were negatived by the Apex Court. The Apex Court taking into account the

provisions made in Section 92A of the Act of 1939 which makes provisions which are pari-materia to Section 140 of the said Act, observed that it is evident that Section 92A is in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of No Fault Liability. In the matter of interpretation of a beneficial legislation the approach of the Courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which leads to defeat that purpose. It was further observed that it cannot be held that the petrol tanker had ceased to be a motor vehicle after the collision or that it was not being used as motor vehicle, since it was lying immobile.

The Apex Court noticing that the legislature has used the words “accident arising out of the use of Motor Vehicle” in Section 92A of the Act of 1939 observed in paragraph 33 of the judgement that in the context of motor accidents the expressions “caused by” and “arising out of” are often used in statutes. Although both these expressions imply a causal relationship between the accident resulting in injury and the use of the motor vehicle but they differ in the degree of proximity of such relationship. It was

further found that the expression “arising out of” require a less proximate relationship of the injury to the relevant use of the vehicle than is required to satisfy the words “caused by”.

In paragraph 35 of the decision, it was further observed that as compared to the expression “caused by”, the expression “arising out of” has a wider connotation. In section 92A of the Act of 1939, parliament has chosen to use the expression “arising out of” which indicates that for the purpose of awarding compensation under Section 92A, the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression “arising out of the use of a motor vehicle” in Section 92A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment.

Ratio laid down in the above decision would squarely apply in the present case also. Wider connotation of the term “arising out of the use of a motor vehicle” which we have adopted in the present case is thus supported by the above-

mentioned decision of the Apex Court.

17. In the conclusion, we find that the principal contention raised by the learned advocate for the appellant insurance company that the claim petition under Section 163A of the Motor Vehicles Act itself was not maintainable cannot be sustained.

18. As noted earlier, learned advocate for the appellant insurance company was unable to dislodge the computation of compensation made by the Claims Tribunal. Even otherwise, we find that there was sufficient evidence on record to permit the Tribunal to assess monthly income of the deceased at Rs. 3,000/-. Considering the age of deceased being 35 years on the date of accident, the Tribunal correctly applied the structured formula and computed compensation payable to the claimants. As noted earlier, the Tribunal has awarded interest only at the rate of 6% per annum.

19. In overall analysis, we find no reason to interfere. The appeal is therefore, found to be devoid of merits and is hereby dismissed.

20. Learned advocate Mr. Sejpal submitted that the claimants require some amount of disbursement from the award amount deposited by the insurance company. Considering that the accident occurred

in the year 2001 and that the widow of the deceased requires some fund for marriage of her two daughters, it is provided that out of the amount deposited by the insurance company before the claims tribunal, the Tribunal shall disburse a sum of Rs. 1,00,000/- in favour of original claimant no.1 i.e. widow of the deceased.

Remaining amount shall be invested in fixed deposits with a nationalised bank for a period of five years near the residence of the claimants with usual conditions about prohibition against premature encashment of/encumbrance over the deposits, permission to the claimants to withdraw interest periodically accruing on the fixed deposits and a direction to the bank not to permit the bank accounts of the claimants to be operated by any power of attorney holder other than a close relative of the claimants.

21. With these directions, the First Appeal as well as the Civil Application are disposed of.

(M.S.Shah,J.)

(Akil Kureshi,J.)

(raghu)